

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/25/2013

Action Requested By:
Legal

Agenda Item Type
Resolution

Subject Matter:

Ground Lessor's Estoppel Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Ground Lessor's Estoppel Agreement between the City of Huntsville and Propst Broadway, LLC.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 13- _____

WHEREAS, the City of Huntsville as "Ground Lessor" entered into that certain Ground Lease by and between the City and Inkana Group, LLC, dated September 10, 1998, and recorded on May 12, 1999, in Deed Book 945, Page 51, as amended by that certain Amendment to Ground Lease, dated January 7, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 78, as assigned to the Downtown Redevelopment Authority of the City of Huntsville, Alabama, by that Assignment of Ground Lease dated January 14, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 86, and as amended by the certain Second Amendment to Ground Lease dated September 13, 2001, and recorded on June 1, 2004, as Instrument Number 20040601000117970; and as further amended by that certain Third Amendment to Ground Lease dated April 22, 2004, and recorded on June 1, 2004, as Instrument Number 20040601000117980, as assigned to Colonial Plaza Condominium Association, Inc., dated August 4, 2004, recorded on June 17, 2005 as Instrument Number 2005061700039352, all as recorded in the Office of the Judge of Probate of Madison County, Alabama (the "Ground Lease"); and

WHEREAS, it is the intent of the City Council of the City of Huntsville, to approve the Ground Lessor Estoppel Certificate in substantially the form attached hereto as Exhibit A.

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Ground Lessor's Estoppel Agreement by and between the City of Huntsville and Propst Broadway, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Ground Lessor's Estoppel Agreement between the City of Huntsville and Propst Broadway, LLC," consisting of four (4) pages including Exhibit A, and the date of April 25, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25th day of April, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 25th day of April, 2013.

Mayor of the City of
Huntsville, Alabama

STATE OF ALABAMA)

COUNTY OF MADISON)

GROUND LESSOR'S ESTOPPEL CERTIFICATE

TO: **PROPST BROADWAY, LLC**, an Alabama limited liability company
(**"Propst"**)

RE: Ground Lease by and between the City of Huntsville ("**Ground Lessor**") and Inkana Group, LLC, dated September 10, 1998, and recorded on May 12, 1999, in Deed Book 945, Page 51, as amended by that certain Amendment to Ground Lease dated January 7, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 78, as assigned to The Downtown Redevelopment Authority of the City of Huntsville, Alabama, by that certain Assignment of Ground Lease dated January 14, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 86, and as amended by that certain Second Amendment to Ground Lease dated September 13, 2001 and recorded on June 1, 2004 as Instrument No. 20040601000117970; and as further amended by that certain Third Amendment to Ground Lease dated April 22, 2004, and recorded on June 1, 2004 as Instrument No. 20040601000117980, as assigned to Colonial Plaza Condominium Association, Inc., dated August 4, 2004, recorded on June 17, 2005, as Instrument No. 2005061700039352 (the "**Ground Lease**").

The undersigned Ground Lessor certifies and represents to Propst that, as of this date, the following are true and correct:

1. Attached hereto as **Exhibit A** is a true, correct and complete copy of the Lease and any and all amendments, supplements and assignments thereto. The Lease is in full force and effect and contains the entire agreement between the Ground Lessor and the Lessee under the Lease with respect to the Property. The Lease has not been modified, altered or amended except as set forth in **Exhibit A**.
2. The undersigned is the Ground Lessor under the Lease and has not assigned or conveyed, or agreed to assign or convey, all or any part of its interest in the Lease or in the Property.
3. There is and has been no uncured default in the performance of the Lease by the Lessee, nor has any event occurred or condition arisen, to the knowledge of the Ground Lessor, which, with the passage of time or the giving of notice or both, would constitute a default under or breach of the Lease by the Lessee.
4. Rental and all other charges due under the Lease have been fully paid through the date hereof.

5. The initial term of the Lease runs through June 15, 2025, unless sooner terminated pursuant to the provisions of the Lease, with five (5) options to renew for successive periods of ten (10) years each.

6. The Ground Lessor hereby expressly consents to an assignment of the Ground Lease by Lessee and agrees that the Lessee's execution and delivery of such Assignment will not constitute a default under the Lease.

7. The Ground Lessor confirms there are no mortgages, hypothecations or pledges now encumbering the Ground Lessor's fee interest in the Property and that the Lease shall remain superior to all fee mortgages hereafter encumbering the Ground Lessor's fee interest in the Property.

The undersigned acknowledges that Propst is relying upon this certificate and the covenants and representations contained herein in purchasing the commercial condominium units in the building known and commonly referred to as the BB&T Bank Building located at 305 Church Street, SW, Huntsville, Alabama, and the Ground Lessor makes the above covenants and representations for the benefit and protection of Propst, its successors and assigns.

[Remainder of Page Intentionally Left Blank]

Dated: Effective April ____, 2013.

GROUND LESSOR:

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST

Print Name: Charles E. Hagood
Its: Clerk Treasurer

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

Before me, the undersigned, a Notary Public, in and for said county, in said state, personally appeared **Tommy Battle**, as Mayor of **THE CITY OF HUNTSVILLE, ALABAMA**, whose name is signed to the foregoing instrument, and who is known to me, being first duly sworn, acknowledged before me on this day that, being informed of the contents of said Agreement, makes oath that he, as such official and with full authority, has read the foregoing instrument and knows the contents thereof, executed the same voluntarily for and as the act of said City of Huntsville on this date.

Given under my hand this the 25th day of April, 2013.

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT A

LEASE

Ground Lease by and between the City of Huntsville ("Ground Lessor") and Inkana Group, LLC, dated September 10, 1998, and recorded on May 12, 1999, in Deed Book 945, Page 51, as amended by that certain Amendment to Ground Lease dated January 7, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 78, as assigned to The Downtown Redevelopment Authority of the City of Huntsville, Alabama, by that certain Assignment of Ground Lease dated January 14, 1999, and recorded on May 12, 1999, in Deed Book 945, Page 86, and as amended by that certain Second Amendment to Ground Lease dated September 13, 2001 and recorded on June 1, 2004 as Instrument No. 20040601000117970; and as further amended by that certain Third Amendment to Ground Lease dated April 22, 2004, and recorded on June 1, 2004 as Instrument No. 20040601000117980, as assigned to Colonial Plaza Condominium Association, Inc., dated August 4, 2004, recorded on June 17, 2005, as Instrument No. 2005061700039352.

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 4/25/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Lessor's Estoppel Agreement

Document Name: Ground Lessor's Estoppel Agreement between the City and Propst Broadway, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:





Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
-----------------------	-----------------------

Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
-----------------------	-------------

Department	Signature	Date
1) Originating		4-18-13
2) Legal		4-18-13
3) Finance		4/18/13
4) Originating		4-18-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		